



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/148323

PRELIMINARY RECITALS

Pursuant to a petition filed March 25, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance, a hearing was held on April 23, 2013, at Waukesha, Wisconsin.

The issue for determination is whether the Petitioner's patient liability and spousal allocation was properly determined.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Karen Pearson

Waukesha County Health and Human Services
500 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is an institutionalized resident of Waukesha County residing at River Hills West nursing facility.

2. Effective January 1, 2013, Petitioner has gross monthly income from a retirement account of \$1,295.04. He has gross monthly Social Security income of \$808.90 which includes a Medicare premium of \$104.90. After subtracting the \$104.90 Medicare premium payment, the Petitioner has gross monthly income of \$1,999.14.
3. The Petitioner's wife VL has gross monthly income from the Wisconsin Teacher's retirement account of \$2,744.89. Her net income after federal taxes is \$2,446.56. Effective June 1, 2013, that gross monthly income decreased to \$2,443.89. She has gross monthly Social Security income of \$1,162. She has additional gross monthly income from the Petitioner's railroad retirement benefits of \$203.40 from which a Medicare premium payment of \$104.90 and an Anthem health insurance payment of \$57 is deducted. Total gross monthly income was \$4,110.29 from January 1 – June 1, 2013 and \$3,809.29 effective June 1, 2013.
4. VL's monthly expenses are \$4,808.26 as detailed below:

Mortgage	\$570.03
Automobile lease	\$385.60 (through November, 2014)
WE	\$123.00
Time Warner	\$100.45
Condo Fee	\$150
Medical	\$300
Health Insurance	\$218.90 (\$57 Anthem insurance for Petitioner and VL; \$104.90 Medicare payment for VL)
Groceries	\$200
Gas	\$60
Water and Sewer	\$34
Insurance	\$112.33
Church and charity	\$200
Property taxes	\$235
Income taxes	\$298.33 (on VL's Wisconsin Retirement payment)
Cell phone	\$23.62
Credit Card	\$900 (balance of \$4,000 on which VL prepaid \$4000 for cremation services for herself and Petitioner).
Credit Card	\$900 (balance of \$4,000 which is an accumulation of expenses for miscellaneous household items and cash)
5. On March 11, 2013, the agency issued a Positive Notice to the Petitioner informing him that his Medicaid/BadgerCare Plus application was approved for the period of January 1, 2013 – December 31, 2013 with a nursing home patient liability of \$1,849.14/month. No spousal allocation was allowed due to VL's income. Petitioner's patient liability during 2012 was \$1,089/month.
6. On March 25, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Wis. Stat. § 49.455 is the Wisconsin codification of 42 U.S.C. §13964-5 (MCCA). Among other things, the "spousal impoverishment" provisions at Wis. Stat. § 49.455 direct the Department to establish an income allowance for the community spouse of an institutionalized person. That allowance set by the county is \$2,521.57 per month, as directed by MA policy. See, Medicaid Eligibility Handbook, Appendix 18.6.2. The institutionalized person may divert some of his income to his community spouse rather than contributing to his own cost of care. The amount of the diverted income, when combined with the spouse's income, cannot exceed the maximum allowance determined by the agency. Any income of the institutionalized spouse that is not allocated to the community spouse or the personal needs allowance must be paid to the nursing home as the institutionalized person's cost of care share.

An administrative law judge (ALJ) can grant an exception to this limit on income diversion. The ALJ may increase the income allowance following a fair hearing. The ALJ does not have unfettered discretion in creating an exception to the maximum allocation ceiling, however. The relevant statutory provision states that the test for exception is as follows:

(c) If either spouse establishes at a fair hearing that, due to exceptional circumstances resulting in financial duress, the community spouse needs income above the level provided by the minimum monthly maintenance needs allowance determined under sub. (4)(c), the department shall determine an amount adequate to provide for the community spouse's needs and use that amount in place of the minimum monthly maintenance needs allowance in determining the community spouse monthly income allowance under sub. (4)(b).

Wis. Stat. § 49.455(8)(c). Thus an ALJ may augment the maximum allocation ceiling only by amounts needed to alleviate financial duress, to allow the community spouse to meet necessary and basic maintenance needs. The MA Eligibility Handbook states that a court or fair hearing can increase the community spouse income allocation if it determines the spouse is not able to provide for his/her necessary and basic maintenance needs with the amount allocated. MA Handbook, § 18.6.2.

Based on this criteria I have reviewed the expenses noted at Finding # 4 and have concerns and adjustments to make:

- VL notes \$23.62 as a monthly expense cell phone. She also has a landline included with her TV service package. This office has routinely concluded that one phone is a necessary expense. Thus, I will allow the landline as part of the TV package but disallow the monthly cell phone expense.
- In accordance with the past decisions of this office, charitable contributions cannot be included as a necessary and basic need. Thus, I will disallow \$200/month for the charitable contributions.
- With regard to the credit cards, the Petitioner testified that she has \$4000 outstanding on each of two cards. The charges on the cards include \$4000 for prepaid cremation services for herself and the Petitioner. The remaining \$4000 represents miscellaneous household expenses and cash. Regarding the \$4000 prepaid cremation expense, with a payment of \$900/month, that expense should be paid off by the end of the year. Regarding the remaining \$4000, with a payment of \$900/month, the Petitioner will pay down the balance at approximately a rate of \$400/month (\$900 payment - \$500 in additional charges). Thus, she will have substantially reduced the outstanding balance by the end of the year. I will allow the entire \$900 through the end of the year to allow the

Petitioner to pay down the balance. Thereafter, the Petitioner's monthly expenses should be much lower as her credit card debt should be substantially decreased. Without knowing more about the nature of the miscellaneous expenses, I cannot make a determination with regard to whether they are basic and necessary. Recognizing that there are basic and necessary needs for everyone that are difficult to quantify or predict, I conclude that \$200/month is a reasonable amount for basic and necessary miscellaneous expenses for one person and therefore included that amount in determining the allocation after the end of the year.

Based on allowable expenses of \$4,584.64 through December, 2013, I conclude that the agency should allocate \$474.35 to VL from the Petitioner's income for the period of January 1, 2013 – May 31, 2013 (\$4,584.64 - \$4,110.29). This reduces the Petitioner's patient liability to \$1,374.79 (\$1,849.14 - \$474.35). Effective June 1, 2013, VL's allocation should increase to \$775.35 (\$4,584.64 - \$3,809.29) due to the decrease in her income. The Petitioner's patient liability will then be \$1,073.79 (\$1,849.14 - \$775.35). By January 1, 2014, VL's expenses for basic and necessary needs should be reduced to \$2,984.64 (all basic and necessary expenses noted above with \$200/month for credit card expenses/cash instead of \$1800/month). Because her expenses will be less than her income, the allocation will end effective January 1, 2014. However, if VL's circumstances change, she can request further review of the spousal allocation at that time.

CONCLUSIONS OF LAW

That Petitioner has demonstrated that a community spouse income allocation in the amount of \$474.35 is warranted for the period of January 1, 2013 – May 31, 2013 and an allocation in the amount of \$775.35 is warranted for the period of June 1, 2013 – December 31, 2013. Thereafter, the allocation will end unless VL requests further review at that time.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to add a spousal allocation of \$474.35 per month for the period of January 1, 2013 – May 31, 2013 and an allocation of \$775.35 per month for the period of June 1, 2013 – December 31, 2013. Thereafter, the allocation will end unless the Petitioner or VL request another review and an additional allocation is ordered. The agency must take these steps within 10 days of the date of this Order.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

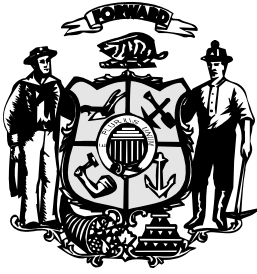
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 18th day of June, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 18, 2013.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability